

SOUTHWEST METRO EDUCATIONAL COOPERATIVE

River Valley Education Center

JOINT POWERS AGREEMENT

This Agreement is made and entered into this 1st day of August, 2013, by and among Independent School District No. 2905 (Tri-City United), Independent School District No. 716 (Belle Plaine), Independent School District No. 717 (Jordan), Independent School District No. 719 (Prior Lake-Savage), Independent School District No. 720 (Shakopee), Independent School District No. 721 (New Prague), and the SouthWest Metro Educational Cooperative (hereinafter referred to as the "SWMetro"), all being school districts and governmental units of the State of Minnesota. Each of the six independent school districts shall hereinafter be referred to as a "Participating Independent District" or the six jointly as the "Participating Independent Districts." The Participating Independent Districts and the SWMetro shall hereinafter be referred to as the "Collaborating Districts."

RECITALS:

WHEREAS, through a joint powers agreement entered into on May 12, 1997 by the Participating Independent Districts and the Minnesota River Valley Special Education Cooperative (MRVSEC), the River Valley Education Center (RVEC) was established and a special services facility was constructed in Jordan to be used by MRVSEC to provide special services to the Participating Independent Districts; and

WHEREAS, subsequently, the programs provided by MRVSEC and the programs provided by the Carver-Scott Educational Cooperative (CSEC) were

blended to improve options for students and to reduce taxpayer costs; and

WHEREAS, a new Joint Powers Cooperative (SWMetro) has been established to operate the programs formerly provided by MRVSEC and CSEC; and

WHEREAS, upon SWMetro assuming all assets and liabilities of MRVSEC and CSEC, MRVSEC and CSEC shall be dissolved; and

WHEREAS, one of the original Participating Independent Districts, Independent School District No. 394 (Montgomery), was subsequently renamed Montgomery-Lonsdale; and

WHEREAS, Montgomery-Lonsdale merged with LeCenter on July 1, 2012, to form Tri-City United; and

WHEREAS, the Collaborating Districts now desire to revise and amend the original Joint Powers Agreement that established the River Valley Education Center for the purpose of continuing the collaborative services available through this facility through relationship with SWMetro pursuant to the terms and conditions described below.

NOW, THEREFORE, in consideration of the promises and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

AUTHORITY; PURPOSE; DUTIES.

Section 1. AUTHORITY. This Agreement is entered into by the Collaborating Districts pursuant to Minnesota Statutes § 471.59.

Section 2. PURPOSE. The purpose of this Agreement is to provide a framework for the ownership and governance of a special services facility to be used by SWMetro to provide special and other educational services to the Participating Independent Districts and other Public School Districts. The facility is located in the City of Jordan, Minnesota, and hereinafter to be referred to as the "River Valley Education Center (RVEC)."

Section 3. DUTIES OF SWMETRO. SWMetro shall have the ultimate responsibility for the staffing, scheduling, operation, management, control, administration, and promotion of the RVEC.

ARTICLE II

GOVERNING BOARD.

Section 1. CREATION; POWERS. SWMetro was created pursuant to a Joint Powers Agreement dated July 1, 2013. Six of the ten original member districts of the SWMetro are the Participating Independent Districts in this Agreement. The control and management of SWMetro is vested in a Governing Board established pursuant to Article II of said Agreement. Said Governing Board shall have such additional powers as specified in this Agreement, including all powers necessary to provide recommendations on issues relating to the operation and governance of the RVEC.

ARTICLE III

USE OF SITE

Section 1. ACQUISITION AND USE.

Subd. 1. Acquisition of Building Site. Jordan conveyed to MRVSEC land located on the existing Jordan Public School site to be used as the RVEC site. The land was conveyed from Jordan to the MRVSEC for \$1.00 and other good and

valuable consideration herein contained. MRVSEC shall convey ownership of the land to SWMetro for good and valuable consideration to be established by the MRVSEC and SWMetro Governing Boards.

Subd. 2. Grounds.

- (a) Jordan shall, at its expense, provide usual and customary lawn mowing of the RVEC site.
- (b) Jordan shall provide snow removal for said parking lot and any sidewalks located on the RVEC site. The SWMetro will reimburse Jordan for one-half of the costs attributable to said snow removal.

Subd. 3. Parking Lot and Sidewalks.

- (a) Jordan will allow the SWMetro to use its existing parking lot for SWMetro's overflow parking.
- (b) A parking lot was constructed on the site conveyed by Jordan to MRVSEC and Jordan will be allowed to continue to use said parking lot for athletic activity parking so long as its use does not interfere with the SWMetro's usage.
- (c) Jordan agrees to maintain its parking lot in reasonable repair.
- (d) SWMetro agrees to maintain its parking lot in reasonable repair.
- (e) SWMetro will charge back to Jordan one-half of the operating costs attributable to its maintenance of its parking lot, including seal coating, striping, crack filling and similar maintenance, but excluding resurfacing or reconstruction which shall be treated as continuing capital costs.

Subd. 4. Use of Facilities. SWMetro will have adequate use of the Jordan Public

School site outdoor facilities without charge. Jordan will have use of the enlarged gymnasium without charge after 3:00 p.m. on weekdays and all day on weekends. Other use prior to 3:00 p.m. on weekdays during vacations and other periods of the year when school is not in session at the RVEC may be approved by the SWMetro and the approval shall include additional allocations of utility costs. SWMetro and Jordan will coordinate the scheduling of the use of the respective facilities.

Section 2. GYMNASIUM CONSTRUCTION AND USE.

Subd. 1. Enlarged Gymnasium. The RVEC will includes an enlarged gymnasium pursuant to specifications for said enlargement approved by Jordan. The agreed upon additional cost of the enlarged gymnasium was \$336,000. Jordan's contribution for the cost of the enlarged gymnasium was \$121,000.00, not including equipment. The amount of \$215,000 was financed to pay the contribution of the remaining Participating Independent Districts for the cost of the enlarged gymnasium.

Subd. 2. Utility Costs. SWMetro will be responsible for utility costs for the RVEC, subject to a percentage contribution by Jordan for its use of the enlarged gymnasium. Jordan, as and for its contribution to costs arising out of its use, shall contribute to SWMetro 66.667% of total gas and electric costs for the enlarged gymnasium portion of the RVEC, as calculated by the providing utility.

ARTICLE IV

FOOD SERVICES.

Section 1. FOOD SERVICES. Jordan will provide food services for staff and students of SWMetro to a maximum service for 100 persons. Additional services will be provided upon

mutual agreement by Jordan and SWMetro. Said food services will be commensurate with food services provided by Jordan for its staff and students.

Section 2. REIMBURSEMENT. SWMetro will reimburse Jordan for food services provided, commensurate with the charges established by Jordan for the provision of food services to its staff and students, along with a reasonable additional charge for packaging and delivery.

ARTICLE V

OPTION TO PURCHASE; SALE.

Section 1. OPTION TO PURCHASE.

a) Option to Purchase

(1) SWMetro hereby grants to Jordan an option to purchase the RVEC and site if SWMetro elects to sell the RVEC and site. In this event, written notice shall be provided to Jordan by SWMetro. Jordan shall have sixty (60) days to provide in writing its intention to purchase the RVEC and site. Jordan shall pay SWMetro the amount of \$1.00 for the site, plus an amount equal to the fair market value of the RVEC (excluding the value of the site), less applicable credits or reductions set forth below.

(2) SWMetro and Jordan may mutually agree upon an appraiser to determine the fair market value of the RVEC (excluding the value of the site). If they have not mutually agreed upon an appraiser within fifteen (15) days following written notice of election to purchase by Jordan, each shall within thirty (30) days thereafter obtain its own appraisal. If SWMetro and Jordan have been unable to reach agreement on the fair market value of said property within sixty (60)

days following written notice of election to purchase by Jordan, they mutually agree that either may submit the issue to binding arbitration pursuant to the then existing rules of the American Arbitration Association. The issue to be submitted to the arbitrator will be a determination of the fair market value of the RVEC (excluding the value of the site). Subject to appeal rights under the Minnesota Arbitration Act, the decision of the arbitrator shall be final and binding upon both parties.

- (3) The amount to be paid by Jordan to SWMetro shall be reduced by the following amounts: (i) \$121,000 to reflect Jordan's initial contribution to the enlarged gymnasium improvement on the site; and (ii) an amount not to exceed \$26,000 to reflect Jordan's actual contribution for equipment initially installed as part of the RVEC.
- (4) From the amount received from Jordan, SWMetro shall pay the Participating Independent Districts, other than Jordan, the amount of \$215,000. The amount paid to each Participating Independent District other than Jordan shall be the total times the percentage determined by dividing the total amount levied by that Participating Independent District by the total amount of all levies certified by all the Participating Independent Districts other than Jordan.
- (5) In the event the fair market value of the RVEC (excluding the value of the site) is not sufficient to make the full \$362,000 of reductions or payments in subparagraphs (3) and (4) above, the amounts of those reductions or payments shall be prorated proportionately.

Section 2. SALE TO THIRD PARTY OTHER THAN JORDAN. If SWMetro sells the

RVEC and site to a third party other than Jordan, SWMetro shall pay to Jordan from the net proceeds of the sale the following amounts: (i) \$121,000 to reflect Jordan's initial contribution to the enlarged gymnasium improvement on the site; (ii) an amount not to exceed \$26,000 to reflect Jordan's actual contribution for equipment initially installed as part of the RVEC; and (iii) \$40,000 to reflect the agreed upon value of the land originally conveyed by Jordan to the MRVSEC for the site of the RVEC. SWMetro shall also pay the Participating Independent Districts, other than Jordan, the amount of \$215,000 less any amounts of the original \$215,000 financed to pay a portion of the costs of the enlarged gymnasium that are paid by SWMetro as part of the Termination Value. The amount paid to each Participating Independent District other than Jordan shall be the total times the percentage determined by dividing the total amount levied by that Participating Independent District by the total amount of all levies certified by all the Participating Independent Districts other than Jordan. In the event the net proceeds of the sale of the RVEC and site are not sufficient to make the full \$402,000 of payments to Jordan and the other Participating Independent Districts, the amounts of those payments shall be prorated proportionately. As used in this section, the term "net proceeds" is defined as the amount received from the sale, less any costs or expenses of the sale.

ARTICLE VI

FINANCES.

Section 1. DISSOLUTION The Collaborating Districts recognize that the RVEC was paid for by the Participating Independent Districts through levies and other fund sources. Thus, if the title to the RVEC were to vest in SWMetro and if SWMetro were thereafter to dissolve and its assets were to be divided among its member school districts, it is the intent

of this subdivision that the real property at the RVEC or the proceeds of its sale, if applicable, would be divided between the six Participating Independent Districts Independent Districts based on the ratio of the leasing levies paid by each Participating Independent District to the total paid by all the Participating Independent Districts. This requirement shall survive the withdrawal of any Collaborating District from or the termination of this Agreement.

Section 2. INSURANCE.

Subd. 1. Property Insurance. SWMetro will maintain at its expense property insurance on the RVEC and its personal property. Jordan will maintain at its expense property insurance for its personal property used or stored at the Special Services Facility or on the site.

Subd. 2. Liability Insurance. SWMetro and Jordan shall each maintain liability insurance in not less than the statutory maximum liabilities for school districts. Each party will name the other as an additional named insured.

ARTICLE VII

CONTRACTS AND BIDDING; PURCHASES.

Section 1. CONTRACTS; BIDDING. Contracts for the acquisition and betterment of the RVEC and leases, purchases, rentals and sales of equipment and supplies for the RVEC shall be made by the SWMetro in accordance with the Agreement and By-Laws of SWMetro.

ARTICLE VIII

NOTICES; WITHDRAWAL;

TERMINATION; BREACH; AMENDMENTS.

Section 1. NOTICES. All notices required or permitted to be given by a Collaborating District shall be given by the clerk of its school Board. The notice shall be in writing and shall be sent by first class mail to the school Board of a Collaborating District at its administrative offices. A notice shall be timely if postmarked on the day it is due. In the case of a notice requiring school board action, a certified copy of the resolution, motion or minutes of the school board specifying the school Board action shall be sent with the notice.

Section 2. WITHDRAWAL OF PARTICIPATING INDEPENDENT DISTRICTS.

Subd. 1. Procedure. Any Participating Independent District may withdraw from this Agreement by resolution adopted by a majority vote of the full membership of its school Board and by formal written notice to the school Board of each other Participating Independent District and to the Executive Director of SWMetro. The notice shall include a certified copy of the adopted withdrawal resolution. A withdrawal shall only be permitted as specified in this section. A Participating District may withdraw at the end of any fiscal year, provided that it give notice of withdrawal as set forth above no less than six (6) months prior to the effective date of withdrawal.

Subd. 2. Distribution to Withdrawing Participating Independent District. A withdrawing Participating Independent District shall receive as its share of the assets related to the RVEC the total of the principal portion only of its

payments made toward the initial purchase of the building. The Participating Independent District shall receive its share based upon the above formula in five (5) equal annual installments without interest. The first payment shall be made no earlier than December 1 of the calendar year following withdrawal.

Section 3. BREACH OF AGREEMENT. Any Collaborating District breaching this Agreement and given written notice of the breach and the nature thereof shall have thirty (30) days in which to cure the breach. The breaching Collaborating District shall be liable for any expenses incurred by any other Collaborating District to enforce the provisions of this Agreement and any damages incurred by other Collaborating Districts as a result of the breach.

Section 4. TERMINATION. This Agreement may be terminated if the school Boards of all Collaborating Districts adopt written resolutions approving such termination. Upon termination, all funds and property remaining after payment of all outstanding debts and obligations, including the RVEC site, the RVEC, and equipment of any nature, shall become the property of the SWMetro. To the extent permitted by law, the termination shall not affect the continuing liability of present or former Collaborating Districts for indebtedness incurred prior to the termination, or for other continuing obligations, including unemployment compensation or reemployment insurance.

Section 5. AMENDMENTS TO THIS AGREEMENT. Amendments to this Agreement may be proposed by the school board of any Participating Independent District or by the Governing Board of SWMetro. Notice of proposed amendments shall be sent to all Collaborating Districts. Adoption of an amendment to this Agreement must be approved by resolution by the school board of each Collaborating District before it shall become

effective. An amendment shall require the signatures of the proper officers of the Collaborating Districts and shall be an addendum to this Agreement.

ARTICLE IX

DURATION; INTERPRETATION; SAVINGS CLAUSE.

Section 1. DURATION. This Agreement shall be perpetual in duration unless terminated pursuant to the provisions hereto, any amendments hereto, or any state law terminating the Agreement.

Section 2. INTERPRETATION. The captions of the provisions of this Agreement are for convenience only and shall not be considered or referred to concerning questions of interpretation or construction.

Section 3. SAVINGS CLAUSE. Should any provision or article of this Agreement be found unlawful, the other provisions of this Agreement shall remain in full force and effect if by doing so the purposes of this Agreement, taken as a whole, can be made operative. Should any such provision or article be found unlawful, representatives of the school Boards of the Collaborating Districts shall meet for the purpose of arriving at an agreement on a lawful provision to replace the unlawful provision or article. The newly agreed upon provision or amendment must be approved by the school Boards of the Collaborating Districts by resolutions adopted in the manner specified in this Agreement for the adoption of amendments.

Section 4. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute the same and whole instrument.

IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts have signed this Agreement by authority of their respective school boards.

Approved at a meeting of the School Board thereof held on the ___ day of _____, 2013.

INDEPENDENT SCHOOL DISTRICT NO. 2905 (TRI-CITY UNITED)

By _____
Chair

By _____
Clerk

Approved at a meeting of the School Board thereof held on the ___ day of _____, 2013.

INDEPENDENT SCHOOL DISTRICT NO. 716 (Belle Plaine)

By _____
Chair

By _____
Clerk

Approved at a meeting of the School Board thereof held on the ___ day of _____, 2013.

INDEPENDENT SCHOOL DISTRICT NO. 717 (Jordan)

By _____
Chair

By _____
Clerk

Approved at a meeting of the School Board thereof held on the ___ day of _____, 2013.

INDEPENDENT SCHOOL DISTRICT NO. 719 (Prior Lake-Savage)

By _____
Chair

By _____
Clerk

Approved at a meeting
of the School Board
thereof held on the
___ day of _____, 2013.

**INDEPENDENT SCHOOL DISTRICT NO. 720
(Shakopee)**

By _____
Chair

By _____
Clerk

Approved at a meeting
of the School Board
thereof held on the
___ day of _____, 2013.

**INDEPENDENT SCHOOL DISTRICT NO. 721
(New Prague)**

By _____
Chair

By _____
Clerk

Approved at a meeting
of the School Board
thereof held on the
___ day of _____, 2013.

**SOUTHWEST Metro Educational Cooperative
(SWMetro)**

By _____
Chair

By _____
Clerk